

IN THE IOWA DISTRICT COURT FOR BLACK HAWK COUNTY

STATE OF IOWA, ex rel., IOWA
DEPARTMENT OF NATURAL
RESOURCES (99AG23542),

Plaintiff,

vs.

JAMES DOS and WONDER ACRES, INC.,

Defendants.

) LAW NO. _____
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) **PETITION AT LAW**
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COMES NOW Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources (hereafter DNR) and for its claim against Defendants James Dos (hereafter Dos) and Wonder Acres, Inc., states as follows:

INTRODUCTION

1. All animal feeding operations, except small animal feeding operations, must file a manure management plan that meets environmental requirements. Manure management plans protect the environment by insuring that an operation has adequate land available for the application of the manure nutrients. Adequate land, in turn, insures that the manure is not over applied and thereby avoids manure runoff into the waters of the State.

Although the vast majority of feeding operations comply with manure management plan requirements, a few operators have failed to file manure management plans. Defendant James Dos has failed to submit a manure management plan for his facility in Black Hawk County. As a result, Dos applied manure without an approved manure management plan in place. The State of

Iowa now seeks civil penalties, issuance of a permanent injunction, and collection of an administrative penalty against the defendants for these violations.

PARTIES

2. The State of Iowa is a sovereign state of the United States of America.
3. The DNR is a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.
4. Defendant James Dos resides at 6344 East Mt. Vernon Road, Waterloo, Black Hawk County, Iowa, and is president of Wonder Acres, Inc.
5. Defendant Wonder Acres, Inc., is an Iowa corporation with its principal place of business at 6344 East Mt. Vernon Road, Waterloo, Black Hawk County, Iowa. The Iowa Secretary of State administratively dissolved Wonder Acres, Inc., pursuant to Iowa Code section 490.1421 on August 5, 2002.

JURISDICTION

6. Rulemaking authority relating to the construction and operation of animal feeding operations is contained in Iowa Code sections 455B.173(13) and 459.103(1). 567 Iowa Admin. Code 65 contains rules relating to animal feeding operations.
7. The owner of a confinement feeding operation, other than a small animal feeding operation, shall submit a manure management plan to the DNR if the confinement feeding operation was constructed or expanded after May 31, 1985, or the owner constructs a manure storage structure. Iowa Code §§ 459.312(1)(a)(1) and (2); 567 Iowa Admin. Code 65.16(1)(b) (1) and (2).

8. All persons required to submit a manure management plan to the department shall also pay to the department an indemnity fee except those operations constructed prior to May 31, 1995, which were not required to have a construction permit. Iowa Code § 459.503; 567 Iowa Admin. Code 65.16(6). Any person submitting an original manure management plan must also pay to the department a manure management plan filing fee of \$250.00, which shall be included with each original manure management plan being submitted. Iowa Code § 459.316(1)(b); 567 Iowa Admin. Code 65.16(7).

9. Manure shall not be removed from a manure storage structure which is part of a confinement feeding operation for which a manure management plan is required, until the DNR has approved the manure management plan. Iowa Code § 459.312(5); 567 Iowa Admin. Code 65.16(5).

10. The DNR and the Attorney General shall enforce the provisions of chapter 459 in the same manner as provided in chapter 455B, division I, unless otherwise provided. Iowa Code § 459.103(3).

11. A person who violates subchapter III of chapter 459 shall be subject to a civil penalty which shall be established, assessed and collected in the same manner as provided in section 455B.191. Iowa Code § 459.603.

12. A person who violates any provision of part 1 of division III of Iowa Code chapter 455B or any permit, rule, standard or order issued under part 1 of division III of chapter 455B shall be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation. Iowa Code § 455B.191(1).

13. The Attorney General shall, at the request of the director with approval of the Environmental Protection Commission (hereafter EPC), institute any legal proceedings, including an action for an injunction or a temporary injunction, necessary to enforce the penalty provisions of part 1 of division III of chapter 455B. Iowa Code § 455B.191(4).

14. The Attorney General is authorized under Iowa Code section 455B.109(3), on request of the DNR, to institute summary proceedings to recover the penalty and any accrued interest at the rate of one and one-half percent (1.5%) per month or part of a month on the unpaid balance where a penalty has been assessed by the DNR in a final administrative order but remains unpaid.

FACTS

15. On July 18, 2005, the EPC voted to refer the matters described in paragraphs sixteen (16) through twenty (20) below to the Attorney General for purposes of initiating judicial enforcement against these defendants.

16. Defendants James Dos and Wonder Acres, Inc., own and operate a confinement feeding operation for approximately 172,000 chickens and 800 hogs located in Section 25, Bennington Township, Black Hawk County, Iowa. The facility consists of one (1) finishing building for the hogs, and three (3) buildings for the chickens with a total animal unit capacity of 750. Manure is stored in a concrete storage basin.

17. On December 9, 2004, DNR officials conducted an inspection at the defendants' facility. DNR officials discovered that the facility was constructed in 1991, and had an animal unit capacity of 750. The defendants had not submitted a manure management plan and had not paid any of the applicable fees.

18. On February 28, 2005, the director of the DNR issued Administrative Order No. 2005-AFO-06 to the defendants, a copy of which is attached, marked as Exhibit A and incorporated by reference. The Order required the defendants to submit a complete manure management plan and fees within 45 days of receipt of the Order. Administrative Order No. 2005-AFO-06 also assessed an administrative penalty of Three Thousand Dollars (\$3,000.00), pursuant to Iowa Code section 455B.109 and 567 Iowa Admin. Code 10.1 - 10.3. The defendants received a copy of the Order on March 5, 2005, and March 8, 2005, as shown by the return receipts, copies of which are attached, marked as Exhibits B and C and incorporated by reference. The defendants did not appeal the Order.

19. The defendants failed to submit a manure management plan and applicable fees to the department. The defendants continued to land apply manure without an approved manure management plan.

20. The defendants failed to pay the administrative penalty referenced in paragraph eighteen (18).

VIOLATIONS

21. The defendants have failed to submit an approvable manure management plan and applicable fees in violation of Iowa Code sections 459.312(1)(a)(1) and (2), 459.316(1)(b), 459.503; 567 Iowa Admin. Code 65.16(1)(b)(1) and (2), 65.16(6), 65.16(7), and Administrative Order No. 2005-AFO-06.

22. The defendants have continued to remove and land apply manure without an approved manure management plan in violation of Iowa Code section 459.312(5) and 567 Iowa Admin. Code 65.16(5).

23. The defendants have failed to pay the administrative penalty referenced in paragraph eighteen (18), even though the time for payment has passed, or any accrued interest in violation of Administrative Order No. 2005-AFO-06.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources requests that the Court:

a. assess a civil penalty against James Dos and Wonder Acres, Inc., pursuant to Iowa Code section 455B.191(1), for each day of violation of Iowa Code sections 459.312(1)(a)(1) and (2), 459.312(5), 459.316(1)(b), 459.503; 567 Iowa Admin. Code 65.16(1)(b)(1) and (2), 65.16(5), 65.16(6), 65.16(7); and Administrative Order No. 2005-AFO-06, not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation;

b. issue a permanent injunction ordering Defendants James Dos and Wonder Acres, Inc., to submit an approvable manure management plan and pay the applicable fees, and further enjoining Defendants James Dos and Wonder Acres, Inc., from any violation of Iowa Code sections 459.312(1)(a)(1) and (2), 459.312(5), 459.316(1)(b), 459.503; 567 Iowa Admin. Code 65.16(1)(b)(1) and (2), 65.16(5), 65.16(6), 65.16(7), and Administrative Order No. 2005-AFO-06; and

c. order that the Defendants James Dos and Wonder Acres, Inc., pay the administrative penalty assessed in Administrative Order No. 2005-AFO-06 and accrued interest, pursuant to Iowa Code section 455B.109(3).

Plaintiff further requests that the Court tax the costs of this action to the defendants and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

DAVID R. SHERIDAN
Assistant Attorney General

A handwritten signature in cursive script, reading "Timothy Benton", is written over a horizontal line.

TIMOTHY D. BENTON, PK1000349

Assistant Attorney General

Environmental law Division

Lucas State Office Bldg., Gr. Floor

321 E. 12th Street, Room 018

Des Moines, Iowa 50319

Phone: (515) 281-6637

Fax: (515) 242-6072

E-mail: tbenton@ag.state.ia.us

ATTORNEYS FOR PLAINTIFF

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

IN THE MATTER OF:

Jim Dos - ID #63483
Section 25, Bennington Township,
Blackhawk County, Iowa

ADMINISTRATIVE ORDER NO.
2005-AFO-06

TO: Jim Dos
6344 East Mt. Vernon Road
Waterloo, IA 50703

Wonder Acres, Inc.
c/o James H. Dos, Reg. Agent
6342 E. Mt. Vernon Rd.
Waterloo, IA 50703


VIOLATION: 567 Iowa Administrative Code (IAC) 65.16(1)"b". You failed to submit a manure management plan (MMP) to the Department.

ORDER: You shall submit to Department Field Office #1 your complete MMP and fees within 45 days of your receipt of this Order. In addition, a penalty of \$3,000.00 is assessed effective 30 days from your receipt of this Order, and shall be paid to the Department (address at bottom of this Order) within 60 days of receipt of this Order, unless you appeal as provided below. \$500.00 of this amount is based on economic benefit for avoiding past fees and costs of complying with MMP requirements. \$1,500.00 of this amount is based on the gravity of the violation, considering the size of this facility, extensive agency efforts in detecting and addressing this violation, and the importance of the animal feeding operation program. \$1,000.00 of this amount is for culpability; the MMP requirements have been widely publicized in the industry and ample time for compliance was allowed.

AUTHORITY: Iowa Code §§455B.109, 459.103(3); 567 IAC 10.3, 65.16(1)"b".

APPEAL: Iowa Code §455B.109; 561 IAC 7.5(1). A written Notice of Appeal may be filed with the Director within 30 days of your receipt of this Order. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC 7. You may contact Randall Clark, Attorney II, at (515) 281-8891 for more information regarding appeal procedures and resolution of this Order.

NONCOMPLIANCE: If you fail to comply with this Order you may be subject to further penalties pursuant to Iowa Code §455B.109 or penalties and injunction pursuant to Iowa Code §§455B.191 and 459.603.


JEFFREY R. VONK, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES
Wallace State Office Building, Des Moines, Iowa 50319

Dated this 28 day of

February, 2005

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits. *nd - pc*

1. Article Addressed to:

JIM DOS
6344 EAT MT VERNON ROAD
WATERLOO IA 50703

2. Article Number
(Transfer from service label)

PS Form 3811, February 2004

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Jim Dos☐ Agent☐ Addressee

B. Received by (Printed Name)

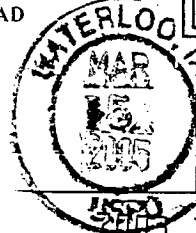
C. Date of Delivery

*3-5-05*D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

1680 0000 8098 4446

Domestic Return Receipt

102595-02-M-1540

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits. *re - pa*

1. Article Addressed to:

WONDER ACRES INC
C/O JAMES H DOS REG AGENT
6342 E MT VERNON ROAD
WATERLOO IA 50703

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X*J. H. Dos*☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

*3-8-05*D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service label)

7003 1680 0000 8098 4453

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540